

BUSINESS RATES: ARE YOU PAYING SOMEONE ELSE'S BUSINESS RATES BILL?



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In August 2010 we published a briefing on the issue of backdated business rates demands levied on ports businesses across the UK, to which we provide an update below. A related point which is of more general application, and on which HFW have recently advised, is the issue of who should be liable to pay business rates on ports and harbours.

Why does it matter?

Whilst the sums levied in respect of business rates are often fairly modest, for larger businesses and their properties (known as hereditaments) e.g. power generation and transmission networks, the sums involved can be substantial. It is therefore advisable that businesses review the business rates they are paying to consider if they are paying too much or whether they are the party who should in fact be liable. Even for fairly modest hereditaments, the cumulative impact of paying business rates every year can be considerable.

Businesses may not even have considered whether they are liable for the business rates that they pay and they may effectively be picking up someone else's tab.

Liability for business rates

Pursuant to the Local Government Finance Act 1988, there are three categories of ratepayer: 1) owners; 2) occupiers; and 3) persons named in central rating lists. A party who is in occupation of all or part of a hereditament shown in a local business rating list in force during the relevant financial year, is subject to business rates where they are in rateable occupation of the hereditament.

As a matter of English law, there are essentially four elements to rateable occupation, all of which need to be established before a party will be held to be in rateable occupation:

1. Actual possession/occupation of the hereditament.



2. Exclusive possession/occupation of the hereditament.
3. Occupation/possession which is of some benefit or value to the occupier/possessor.
4. Occupation/possession which is not too transient.

The grounds on which to challenge business rates

The first point (actual occupation) essentially relates to whether or not the hereditament is used or unused and therefore will not normally be an issue. However, businesses should bear in mind that they may not be liable for business rates in respect of any part of the hereditament which is left empty and they may be entitled to a rebate in respect of those parts.

As the occupation of a port is clearly of some benefit to the occupier, there is not likely to be any issue in relation to the third point.

The fourth requirement, transience, has been the subject of considerable case law, particularly in relation to moorings. For example, a floating dock which was moored by chains but which was frequently moved was held not to be rateable (*R v Morrison* [1952] 1 All ER 350), whereas two vessels which were moored at the same place for some years by anchors placed in dredged out holes large enough to fit the anchors were held to be in occupation of the soil and bed of the river (*Cory v Bristow* (1977) 2 App Cas 262). The question is therefore the degree of permanence. Whilst ports tend to be fixed structures the case law above demonstrates that there may be instances where the test for

rateable occupation arguably fails due to transience and therefore the occupier may be able to challenge its liability for business rates on this basis.

Exclusive occupation

The requirement which is likely to give rise to the most difficulties in relation to ports is the requirement of exclusive occupation. The key question in assessing exclusive occupation is whether the occupier can exclude others from using the hereditament in the same way. Evidence of the terms under which the party occupies the hereditament will be useful in resolving this issue. For instance, where a party occupies the port under a non-exclusive licence, it is arguable that they are not in exclusive occupation and there have been cases in the past upholding this position. However, whilst the fact that the licence is expressed to be non-exclusive is of assistance, it will not be determinative. The question will instead turn on the extent to which the parties other than the occupier have in fact used the hereditament and have interfered with the occupier's enjoyment of the hereditament.

This position is reflected in the Valuation Office Agency's guidance in relation to Docks and Harbours. In particular, Practice Note 1: 2005: Docks and Harbours, Occupation by other parties, para (b) states that there may be arrangements whereby the tenants'/licensees' occupation can be disturbed at any time in certain circumstances (e.g. where the land or buildings are required for the urgent need of the business of the port). Where such disturbances

take place, the question is whether they are such that the occupier is no longer in rateable occupation. If the disturbances are rare and have little impact, the occupier will still be in rateable occupation.

Hereditaments shared with other businesses

Where two or more parties are in occupation of the land, the test is to ascertain which party is in paramount occupation. In the context of a port, there will almost always be more than one occupier, i.e. the port plus the users of the port. The question is whether one party has the enjoyment of the property "to the substantial exclusion of all other persons" (*Southern Railway Co* [1936] AC 511). Again this is ultimately a question of fact and will depend on whether an occupier retains and exercises such control over the parts of the port that it is not possible to regard the users as being in control of their own space.

Update - liability for backdated business rates

The Localism Bill was put before Parliament on 13 December 2010. Although not yet in force, the Bill will clarify the position on the liabilities of businesses for backdated business rates in respect of ports. In particular, such liability will be cancelled in certain circumstances. The likely criteria for cancellation, as set out in the Bill's impact assessment, are:

1. The hereditament must have been entered onto the 2005 rating list for the first time after being split from a larger hereditament between 1 January 2008 and 31 March 2010.



2. The newly split property must have a backdated assessment of more than 33 months.

It is not yet known when this is likely to enter into force but HFW will continue to review the situation and issue an update in due course.

Saving money on your business rates bill

There are therefore a variety of grounds on which businesses can dispute their liability for business rates, which can lead to significant savings for businesses of any size. Businesses should consider whether they are the correct party to be

paying business rates on the property they occupy and, if so, whether the amount they are paying is excessive, for example, because some part of that property is left unoccupied.

HFW has experience in handling large scale appeals against business rates and has also advised on the rateable occupation of ports.

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